UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,259	07/18/2003	William Frederick Reeves	DC-05564	4696

7590 01/18/2008

Stephen A. Terrile
HAMILTON & TERRILE, LLP
PO Box 203518
Austin, TX 78720

EXAMINER	
CARDENAS NAVIA, JAIME F	
ART UNIT	PAPER NUMBER
4182	

MAIL DATE	DELIVERY MODE
01/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/623,259	REEVES ET AL.	
	Examiner	Art Unit	
	JAIME F. CARDENAS NAVIA	4182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *18 July 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *October 27, 2003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Introduction

1. This **NON-FINAL** office action is in response to applicant's submission filed on July 18, 2003. Currently, claims 1-12 are pending.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on October 17, 2003 has been considered by the examiner.

Drawings

3. **The drawings are objected to** as failing to comply with 37 CFR 1.84(p)(4) because reference character "255" has been used to designate both "Ship Process" in Figure 2 and "Ship Order" in Figure 5.

4. **The drawings are objected to** as failing to comply with 37 CFR 1.84(p)(4) because reference characters "510" and "610" have both been used to designate Demand Fulfillment System. Reference characters 1214, 1224, 1234, 1254, and 1248 have all been used to designate Do Not Evaluate Carrier Service.

5. **The drawings are objected to** as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Step 1110 is in the description (p. 25, line 10) but not in the Drawings (Figure 11). Factory 240 is in the description (p. 10, lines 5) but not in the Drawings (Figure 2). Hub Delivery Block 330B is in the

description (p. 12, line 3) but not in the Drawings (Figure 3). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: "310Adevelops" should be changed to "310A develops" (p. 11, lines 19). "suppler" should be changed to "supplier" (p. 16, lines 12 *and* 13). "WIP data 632" should be changed to "WIP data 622" to be consistent (p. 20, line 28). P. 23, line 26 through p. 24, lines 21 is a repeat of the preceding 3 paragraphs and should be removed. "step 1156" should be changed to "step 1162" to be consistent (p. 26, line 26).

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. **Claims 1-12 are rejected on the ground of nonstatutory obviousness-type double patenting** as being unpatentable over claims 1-3, 11, 14-16, 24, 27-29, and 37 of Jones et al. (copending Application No. 10/320,889, US 2004/0117230 A1, filed December 16, 2002). Although the conflicting claims are not identical, they are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Regarding claims 1-4, which map to claims 1-3 and 11 of Jones, respectively, the only difference lies in claims 1 and 2, where the present application claims that the customer order includes a desired shipping schedule, and that this desired shipping schedule is used to generate a material request plan, a work schedule, and the material delivery schedule. It is obvious if not inherent that a customer order would include a desired shipping schedule, as customers generally care when they receive their order. Given this, when Jones states in claim 2 that "the customer order is used to generate a subsequent work schedule and the material delivery schedule," it is obvious if not inherent that the desired shipping schedule would be used for the steps of producing and delivering the order motivated by the producer wanting to meet the customer's desired shipping schedule to ensure customer satisfaction.

Regarding claims 5-12, which map to claims 14-16, 24, 27-29, and 37 of Jones, respectively, the only difference lies in claims 6 and 10 with the phrase "the desired shipping schedule." This phrase lacks antecedent base, and even if it is given patentable weight, falls under the argument in the above paragraph as being obvious if not inherent.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. **Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, in the determining step, "inventory of material" should be changed to "inventory of *the* material" to make clear that this step is checking the available inventory of the material to be produced based on the customer order. The generating step states "the generating a material request plan including *scheduling* based upon the desired shipping schedule," but it is unclear what *scheduling* (scheduling of what?) is being based upon the desired shipping schedule. The claim should be amended to make clear what exactly is being scheduled.

Regarding claims 2, 6, and 10, "*the* material delivery schedule" lacks antecedent basis, and should be changed to "material delivery schedule."

Regarding claims 3, 7, and 11, "continuously" is a relative term, which renders the claim indefinite. It is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Regarding claims 5 and 9, "an available inventory of material" should be changed to "an available inventory of *the* material" to make clear that this step is checking the available inventory of the material to be produced based on the customer order. Additionally, "netting

deliveries of material with planned requests for material" should be changed to "netting deliveries of *the* material with planned requests for *the* material."

Claim Rejections - 35 USC § 101

10. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

11. **Claims 9-12 are rejected under 35 U.S.C. 101** because the claimed invention is directed to non-statutory subject matter. The claimed invention of an apparatus comprising *modules* does not fall into one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, article of manufacture, or composition of matter). *Modules* are not clearly defined in the specification, and the standard definition of module ranges from a unit of measurement, to a portion of code in a program, to a standardized component of a system. It is unclear whether the applicant is trying to claim a computer program, in which case it should be claimed as a program product stored on a computer readable medium, or if applicant is seeking to claim a machine. However, a clearer definition of module alone would not place the claimed invention in one of the statutory categories. A proper machine claim is defined by its parts rather than what it is capable of doing, the exception being if the applicant invokes U.S.C. 112, sixth paragraph. A proper program product claim is defined by the processes it performs when executed on a computer.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. **Claims 1-3, 5-7, and 9-11 are rejected under 35 U.S.C. 102(e)** as being anticipated by Lubash et al. (US 2003/0139952 A1).

Regarding claim 1, Lubash teaches:

A method for scheduling work and delivery of material for items in a factory (par. 15, lines 9-19) comprising:

obtaining a customer order (par. 27, lines 5-8), the customer order including an item ordered by a customer, the item having an associated quantity of a material to produce (par. 27, lines 1-5, par. 15, lines 9-14), the customer order including a desired shipping schedule (par. 15, lines 15-19, par. 27, lines 1-5);

determining a current state of an available inventory of material from a plurality of material sources (par. 15, lines 13-14, 18, par. 22, lines 6-11, par. 27, lines 4-5);

generating a material request plan for producing the item using the customer order and the current state of the available inventory, the generating a material request plan including scheduling based upon the desired shipping schedule (par. 27, lines 1-5, par. 15, lines 9-19);

executing the material request plan, the executing the material request plan taking into account the desired shipping schedule (par. 29, lines 1-7, par. 15, lines 15-19).

Regarding claim 2, Lubash teaches wherein the desired shipping schedule, the customer order and the current state of the available inventory are used to generate a subsequent work schedule and the material delivery schedule (par. 27, lines 1-10, par. 15, lines 9-19).

Regarding claim 3, Lubash teaches wherein the obtaining the customer order includes using a status for the customer order (par. 27, lines 5-13, 17-20. Priority is a status), the status for each customer order being updated continuously (par. 6, lines 1-5, par. 31, lines 1-12); and the status for each outstanding customer order corresponds to an outstanding status (This is true by definition, no patentable weight).

Regarding claim 5, Lubash teaches:

A system for scheduling work and delivery of material for items in a factory (par. 15, lines 9-19) comprising:

means for obtaining a customer order (par. 27, lines 5-8), the customer order including an item ordered by a customer, the item having an associated quantity of a material to produce (par. 27, lines 1-5, par. 15, lines 9-14);

means for determining a current state of an available inventory of material from a plurality of material sources (par. 15, lines 13-14, 18, par. 22, lines 6-11, par. 27, lines 4-5);

means for generating a material request plan for producing the item using the customer order and the current state of the available inventory (par. 27, lines 1-5, par. 15, lines 9-19);

means for executing the material request plan, the means for executing the material request plan including means for netting deliveries of material with planned requests for material during the executing of the material request plan (par. 29, lines 1-7, par. 27, lines 10-17).

Regarding claim 6, Lubash teaches wherein the desired shipping schedule, the customer order and the current state of the available inventory are used to generate a subsequent work schedule and the material delivery schedule (par. 27, lines 1-10, par. 15, lines 9-19).

Regarding claim 7, Lubash teaches wherein the obtaining the customer order includes using a status for the customer order (par. 27, lines 5-13, 17-20. Priority is a status), the status for each customer order being updated continuously (par. 6, lines 1-5, par. 31, lines 1-12); and the status for each outstanding customer order corresponds to an outstanding status (This is true by definition, no patentable weight).

Regarding claim 9, Lubash teaches:

An apparatus for scheduling work and delivery of material for items in a factory comprising (par. 15, lines 9-19):

an obtaining module, the obtaining module obtaining a customer order (par. 27, lines 5-8), the customer order including an item ordered by a customer, the item having an associated quantity of a material to produce (par. 27, lines 1-5, par. 15, lines 9-14);

a determining module, the determining module determining a current state of an available inventory of material from a plurality of material sources (par. 15, lines 13-14, 18, par. 22, lines 6-11, par. 27, lines 4-5);

a generating module, the generating module generating a material request plan for producing the item using the customer order and the current state of the available inventory (par. 27, lines 1-5, par. 15, lines 9-19);

a plan execution module, the plan execution module executing the material request plan, the plan execution module including a netting module, the netting module netting deliveries of

material with planned requests for material during the executing of the material request plan (par. 29, lines 1-7, par. 27, lines 10-17).

Regarding claim 10, Lubash teaches wherein the desired shipping schedule, the customer order and the current state of the available inventory are used to generate a subsequent work schedule and the material delivery schedule (par. 27, lines 1-10, par. 15, lines 9-19).

Regarding claim 11, Lubash teaches wherein the obtaining the customer order includes using a status for the customer order (par. 27, lines 5-13, 17-20. Priority is a status), the status for each customer order being updated continuously (par. 6, lines 1-5, par. 31, lines 1-12); and the status for each outstanding customer order corresponds to an outstanding status (This is true by definition, no patentable weight).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

15. **Claims 4, 8, and 12 are rejected under 35 U.S.C. 103(a)** as being unpatentable over Lubash et al. (US 2003/0139952 A1). Lubash does not specifically teach that the item is an information handling system. However, Lubash teaches that their invention "can be used in any system or process in which a plurality of unique input variables and available resources are used and monitored by a demand schedule to optimize the output of the system (par. 15, lines 5-8)," which includes information handling systems (such as computers). Lubash teaches the example of a production facility for producing assemblies made from many combinations of parts and sub-parts (par. 15, lines 1-4), and further teaches the broadness of scope that the invention covers (par. 17, lines 1-20). Thus, it would have been obvious to one skilled in the art at the time of the invention that the item could be an information handling system, motivated by the teaching of Lubash that the invention covers a diverse range of manufacturing and production processes and systems.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAIME F. CARDENAS NAVIA whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 7:30AM - 5:00PM EST, Alt Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on (571) 272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 11, 2007

/JAIME CARDENAS-NAVIA/
Examiner, Art Unit 4182

/Thu Nguyen/
Supervisory Patent Examiner, Art Unit 4182